

UNIFORM DIRECTED TRUST ACT*

Drafted by the

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

and by it

APPROVED AND RECOMMENDED FOR ENACTMENT
IN ALL THE STATES

at its

ANNUAL CONFERENCE
MEETING IN ITS ONE-HUNDRED-AND-TWENTY-SIXTH YEAR
SAN DIEGO, CALIFORNIA
JULY 14 - JULY 20, 2017

WITHOUT PREFATORY NOTE OR COMMENTS

COPYRIGHT © 2017

By

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

July 19, 2017

*The following text is subject to revision by the Committee on Style of the National Conference of Commissioners on Uniform State Laws.

UNIFORM DIRECTED TRUST ACT

SECTION 1. SHORT TITLE. This [act] may be cited as the Uniform Directed Trust Act.

SECTION 2. DEFINITIONS. In this [act]:

(1) “Breach of trust” includes a violation by a trust director or trustee of a duty imposed on that director or trustee by the terms of the trust, this [act], or law of this state other than this [act] pertaining to trusts.

(2) “Directed trust” means a trust for which the terms of the trust grant a power of direction.

(3) “Directed trustee” means a trustee that is subject to a trust director’s power of direction.

(4) “Person” means an individual, estate, business or nonprofit entity, public corporation, government or governmental subdivision, agency, or instrumentality, or other legal entity.

(5) “Power of direction” means a power over a trust granted to a person by the terms of the trust to the extent the power is exercisable while the person is not then serving as a trustee. The term includes a power over the investment, management, or distribution of trust property or other matters of trust administration. The term excludes the powers described in Section 5(b).

(6) “Settlor” means a person, including a testator, that creates, or contributes property to, a trust. If more than one person creates or contributes property to a trust, each person is a settlor of the portion of the trust property attributable to that person’s contribution except to the extent another person has the power to revoke or withdraw that portion.

(7) “State” means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any other territory or possession subject to the jurisdiction of the

United States.

(8) “Terms of a trust” means:

(A) except as otherwise provided in subparagraph (B), the manifestation of the settlor’s intent regarding a trust’s provisions as:

(i) expressed in the trust instrument; or

(ii) established by other evidence that would be admissible in a judicial proceeding; or

(B) the trust’s provisions as established, determined, or amended by:

(i) a trustee or trust director in accord with applicable law; [or]

(ii) court order[; or

(iii) nonjudicial settlement agreement under [Uniform Trust Code Section 111]].

(9) “Trust director” means a person that is granted a power of direction by the terms of a trust to the extent the power is exercisable while the person is not then serving as a trustee. The person is a trust director whether or not the terms of the trust refer to the person as a trust director and whether or not the person is a beneficiary or settlor of the trust.

(10) “Trustee” includes an original, additional, and successor trustee, and a cotrustee.

Legislative Note: A state that has enacted Uniform Trust Code Section 103(18) (2004), defining “terms of a trust,” or Uniform Trust Decanting Act Section 2(28) (2015), defining “terms of the trust,” should update those definitions to conform to paragraph (8). A state that has enacted Uniform Trust Code Section 103(15) and (20) could replace paragraphs (6) and (10) of this section with cross-references to those provisions of the Uniform Trust Code. A state that has not enacted Uniform Trust Code Section 111 (2000) should replace the bracketed language of paragraph (8)(B)(iii) with a cross reference to the state’s law governing nonjudicial settlement or should omit paragraph (8)(B)(iii) if the state does not have such a law.

SECTION 3. APPLICATION; PRINCIPAL PLACE OF ADMINISTRATION.

(a) This [act] applies to a trust, whenever created, that has its principal place of

administration in this state, subject to the following rules:

(1) If the trust was created before [the effective date of this [act]], this [act] applies only to a decision or action on or after that date.

(2) If the principal place of administration of the trust is changed to this state on or after [the effective date of this [act]], this [act] applies only to a decision or action on or after the date of the change.

(b) Without precluding other means to establish a sufficient connection with the designated jurisdiction, the terms of a trust that is a directed trust designating the principal place of administration of the trust are valid and controlling if:

(1) a trustee's principal place of business is located in or a trustee is a resident of the designated jurisdiction;

(2) a trust director's principal place of business is located in or a trust director is a resident of the designated jurisdiction; or

(3) all or part of the administration occurs in the designated jurisdiction.

Legislative Note: A state that has enacted Uniform Trust Code Section 108(a) (2000) could omit subsection (b) and instead add subsection (b)(2) to Section 108 of the state's Uniform Trust Code.

SECTION 4. LAW AND PRINCIPLES OF EQUITY. The common law and principles of equity supplement this [act], except to the extent modified by this [act] or law of this state other than this [act].

SECTION 5. EXCLUSIONS.

(a) In this section, "power of appointment" means a power that enables a person acting in a nonfiduciary capacity to designate a recipient of an ownership interest in or another power of appointment over trust property.

(b) This [act] does not apply to a:

(1) power of appointment;

(2) power to appoint or remove a trustee or trust director;

(3) power of a settlor over a trust to the extent the settlor has a power to revoke the trust;

(4) power of a beneficiary over a trust to the extent the exercise or nonexercise of the power affects:

(A) the beneficial interest of the beneficiary; or

(B) the beneficial interest of another beneficiary represented by the beneficiary under [Uniform Trust Code Sections 301 through 305] with respect to the exercise or nonexercise of the power; or

(5) power over a trust if:

(A) the terms of the trust provide that the power is held in a nonfiduciary capacity; and

(B) the power must be held in a nonfiduciary capacity to achieve the settlor's tax objectives under the United States Internal Revenue Code of 1986[, as amended][, and regulations issued thereunder].

(c) Unless the terms of a trust provide otherwise, a power granted to a person to designate a recipient of an ownership interest in or power of appointment over trust property that is exercisable while the person is not serving as a trustee is a power of appointment and not a power of direction.

Legislative Note: *A state that has not enacted Uniform Trust Code Sections 301 through 305 (2000) should replace the bracketed language in subsection (b)(4)(B) with a cross reference to the state's law governing virtual representation.*

A state that does not permit the phrase “as amended” when incorporating federal statutes, or that does not permit reference to “regulations issued thereunder,” should delete the bracketed language in subsection (b)(5).

SECTION 6. POWERS OF TRUST DIRECTOR.

(a) Subject to Section 7, the terms of a trust may grant a power of direction to a trust director.

(b) A power of direction includes only those powers granted by the terms of the trust.

(c) Unless the terms of a trust provide otherwise:

(1) a trust director may exercise any further power appropriate to the exercise or nonexercise of the director’s power of direction; and

(2) trust directors with joint powers must act by majority decision.

SECTION 7. LIMITATIONS ON POWERS OF TRUST DIRECTOR. A trust director is subject to the same rules as a trustee in a like position and under similar circumstances in the exercise or nonexercise of a power of direction or further power under Section 6(c)(1) regarding:

(1) a payback provision in the terms of the trust necessary for compliance with the reimbursement requirements of Medicaid law in Section 1917 of the Social Security Act, 42 U.S.C. Section 1396p(d)(4)(A)[, as amended][, and regulations issued thereunder]; and

(2) a charitable interest in the trust, including notice regarding the interest to [the Attorney General].

Legislative Note: *A state that does not permit the phrase “as amended” when incorporating federal statutes, or that does not permit reference to “regulations issued thereunder,” should delete the bracketed language in paragraph (1) accordingly.*

In paragraph (2), “Attorney General” is in brackets to accommodate a state that grants enforcement authority over a charitable interest in a trust to another public official.

SECTION 8. DUTY AND LIABILITY OF TRUST DIRECTOR.

(a) Subject to subsection (b), with respect to a power of direction or a further power under Section 6(c)(1):

(1) a trust director has the same fiduciary duty and liability in the exercise or nonexercise of the power:

(A) if the power is held individually, as a sole trustee in a like position and under similar circumstances; or

(B) if the power is held jointly with a trustee or another trust director, as a cotrustee in a like position and under similar circumstances; and

(2) the terms of the trust may vary the director's duty or liability to the same extent the terms of the trust could vary the duty or liability of a trustee in a like position and under similar circumstances.

(b) Unless the terms of a trust provide otherwise, if a trust director is licensed, certified, or otherwise authorized or permitted by law other than this [act] to provide health care in the ordinary course of the director's business or practice of a profession, to the extent the director acts in that capacity, the director has no duty or liability under this [act] .

(c) The terms of a trust may impose a duty or liability on a trust director in addition to the duties and liabilities under this [act].

SECTION 9. DUTY AND LIABILITY OF DIRECTED TRUSTEE.

(a) Subject to subsection (b), a directed trustee shall take reasonable action to comply with a trust director's exercise or nonexercise of a power of direction or further power under Section 6(c)(1) and the trustee is not liable for the action.

(b) A directed trustee must not comply with a trust director's exercise or nonexercise of a

power of direction or further power under Section 6(c)(1) to the extent that by complying the trustee would engage in willful misconduct.

(c) An exercise of a power of direction under which a trust director may release a trustee or another trust director from liability for breach of trust is not effective if:

(1) the breach involved the trustee's or other director's willful misconduct;

(2) the release was induced by improper conduct of the trustee or other director in procuring the release; or

(3) at the time of the release, the director did not know the material facts relating to the breach.

(d) A directed trustee that has reasonable doubt about its duty under this section may petition the [court] for instructions.

(e) The terms of a trust may impose a duty or liability on a directed trustee in addition to the duties and liabilities under this [act].

Legislative Note: A state that has enacted the Uniform Trust Code should move Section 808(a) into Section 603, delete Section 808(b)-(d), and add to the end of Section 105(b)(2) the following text: "except as otherwise provided in Uniform Directed Trust Act Sections 9, 11, and 12." The term "court" in subsection (d) should be revised as needed to refer to the appropriate court having jurisdiction over trust matters.

SECTION 10. DUTY TO PROVIDE INFORMATION TO TRUST DIRECTOR OR TRUSTEE.

(a) Subject to Section 11, a trustee shall provide information to a trust director to the extent the information is reasonably related both to:

(1) the powers or duties of the trustee; and

(2) the powers or duties of the director.

(b) Subject to Section 11, a trust director shall provide information to a trustee or another trust director to the extent the information is reasonably related both to:

(1) the powers or duties of the director; and

(2) the powers or duties of the trustee or other director.

(c) A trustee that acts in reliance on information provided by a trust director is not liable for a breach of trust to the extent the breach resulted from the reliance, unless by so acting the trustee engages in willful misconduct.

(d) A trust director that acts in reliance on information provided by a trustee or another trust director is not liable for a breach of trust to the extent the breach resulted from the reliance, unless by so acting the trust director engages in willful misconduct.

SECTION 11. NO DUTY TO MONITOR, INFORM, OR ADVISE.

(a) Unless the terms of a trust provide otherwise:

(1) a trustee does not have a duty to:

(A) monitor a trust director; or

(B) inform or give advice to a settlor, beneficiary, trustee, or trust director concerning an instance in which the trustee might have acted differently than the director; and

(2) by taking an action described in paragraph (1), a trustee does not assume the duty excluded by paragraph (1).

(b) Unless the terms of a trust provide otherwise:

(1) a trust director does not have a duty to:

(A) monitor a trustee or another trust director; or

(B) inform or give advice to a settlor, beneficiary, trustee, or another trust director concerning an instance in which the director might have acted differently than a trustee or another trust director; and

(2) by taking an action described in paragraph (1), a trust director does not assume

the duty excluded by paragraph (1).

SECTION 12. APPLICATION TO COTRUSTEE. The terms of a trust may relieve a cotrustee from duty and liability with respect to another cotrustee's exercise or nonexercise of a power of the other cotrustee to the same extent that in a directed trust a directed trustee is relieved from duty and liability with respect to a trust director's power of direction under Sections 9 through 11.

Legislative Note: A state that has enacted Uniform Trust Code Section 703(c) or (g) (2000) should revise those sections to make them subject to this section. In the alternative, the state could insert this section as subsection (i) in Uniform Trust Code Section 703 and make subsections (c) and (g) subject to that new subsection (i).

SECTION 13. LIMITATION OF ACTION AGAINST TRUST DIRECTOR.

(a) An action against a trust director for breach of trust must be commenced within the same limitation period as an action for breach of trust against a trustee in a like position and under similar circumstances[as under Uniform Trust Code Section 1005].

(b) A report or accounting has the same effect on the limitation period for an action against a trust director for breach of trust that the report or accounting would have in an action for breach of trust against a trustee in a like position and under similar circumstances[under Uniform Trust Code Section 1005].

Legislative Note: A state that has enacted Uniform Trust Code Section 1005 (2000) should update the bracketed language to refer to that enactment. A state that has enacted a statute other than Uniform Trust Code Section 1005 to govern limitation of an action against a trustee should replace the bracketed language with a cross reference to that statute. A state that has not enacted a statutory limitation should delete the bracketed language.

SECTION 14. DEFENSES IN ACTION AGAINST TRUST DIRECTOR. In an action against a trust director for breach of trust, the director may assert the same defenses a trustee in a like position and under similar circumstances could assert in an action for breach of trust against the trustee.

SECTION 15. JURISDICTION OVER TRUST DIRECTOR.

(a) By accepting appointment as a trust director of a trust subject to this [act], the director submits personally to jurisdiction in this state regarding any matter related to a power or duty of the director.

(b) This section does not preclude use of another method to obtain jurisdiction over a trust director.

SECTION 16. OFFICE OF TRUST DIRECTOR. Unless the terms of a trust provide otherwise, the rules applicable to a trusteeship apply to a trust directorship regarding the following matters:

- (1) acceptance[under Uniform Trust Code Section 701];
- (2) giving of bond to secure performance[under Uniform Trust Code Section 702];
- (3) reasonable compensation[under Uniform Trust Code Section 708];
- (4) resignation[under Uniform Trust Code Section 705];
- (5) removal[under Uniform Trust Code Section 706]; and
- (6) vacancy and appointment of successor[under Uniform Trust Code Section 704].

Legislative Note: A state that has enacted the Uniform Trust Code provisions cited in this section should update the bracketed language to refer to the appropriate provisions of that enactment. A state that has enacted relevant statutory provisions other than the provisions of the Uniform Trust Code cited in this section should replace the bracketed language with cross references to those provisions, except that a state that allows statutory commissions rather than reasonable compensation for a trustee is advised for the reasons given in the comments below to apply a rule of reasonable compensation to a trust director. A state that has not enacted relevant statutory provisions should delete the bracketed language.

SECTION 17. UNIFORMITY OF APPLICATION AND CONSTRUCTION. In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

SECTION 18. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT. This [act] modifies, limits, or supersedes the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001 et seq., but does not modify, limit, or supersede Section 101(c) of that act, 15 U.S.C. Section 7001(c), or authorize electronic delivery of any of the notices described in Section 103(b) of that act, 15 U.S.C. Section 7003(b).

SECTION 19. REPEALS; CONFORMING AMENDMENTS.

(a)

(b)

(c)

SECTION 20. EFFECTIVE DATE. This [act] takes effect